

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Subscriber Carrier)	
Selection Changes Provisions of the)	CC Docket No. 94-129
Telecommunications Act of 1996)	
)	
Policies and Rules Concerning)	
Unauthorized Changes of Consumers')	
Long Distance Carriers)	
)	
LEC Coalition Request for Declaratory Ruling)	
Regarding Carrier Change Verification)	

DECLARATORY RULING

Adopted: June 8, 2005

Released: June 9, 2005

By the Acting Chief, Consumer & Governmental Affairs Bureau:

I. INTRODUCTION

1. This Order denies a Petition for Declaratory Ruling regarding the Commission's carrier change verification rules filed by a coalition of rural local exchange carriers ("LEC Petitioners") on February 1, 2005.¹ Specifically, the LEC Petitioners ask the Commission to declare that certain carrier change verification actions do not violate section 64.1120(a)(2) of the Commission's rules, which prohibits executing carriers from verifying the submission of a change request by a submitting carrier or causing an unreasonable delay in the execution of a change.² For the reasons described below, we deny the LEC Petitioners' request.

¹ *Petition for Declaratory Ruling*, CC Docket No. 94-129, filed Feb. 1, 2005 (*Petition*), by 3 Rivers Telephone Cooperative, Inc., Armstrong Telephone Company Maryland, Armstrong Telephone Company New York, Armstrong Telephone Company North, Armstrong Telephone Company Northern Division, Armstrong Telephone Company Pennsylvania, Armstrong Telephone Company West Virginia, Calaveras Telephone Company, Inc., Chester Telephone Company, Chibardun Telephone Cooperative, Inc., Chickasaw Telephone Company, Citizens Telephone Company of Higginsville, Concord Telephone Company, CTC Telcom, Inc., Darien Telephone Company, DTC Communications, Egyptian Telephone Cooperative, Five Area Telephone, Hardy Telephone Company, Horry Telephone Cooperative, Inc., HTC Communications, Lackawaxen Telecommunications Services, Inc., Lockhart Telephone Co., Margaratville Telephone Company, Mid-Century Telephone Company, Mid-Rivers Telephone Cooperative, Nicholville Telephone Company, Inc., North Central Telephone Cooperative, Inc., North-Eastern Pennsylvania Telephone Company, Peoples Telephone Company, Poka Lambro Telephone Cooperative, Public Service Telephone Company, Ridgeway Telephone Co., Siskiyou Telephone Company, Smart City Telecom, Smithville Telephone Company, Stayton Cooperative Telephone Company, TEC Services, Inc., Trumansburg Telephone Company, Inc., United Telephone Company, Washington County Rural Telephone Cooperative, West Plains Telephone.

² See 47 C.F.R. § 64.1120(a)(2).

II. BACKGROUND

2. Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996, prohibits any telecommunications carrier from submitting or executing an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.³ This practice, known as "slamming," distorts the telecommunications market by enabling companies that engage in fraudulent activity to increase their customer and revenue bases at the expense of consumers and law-abiding companies. A "submitting carrier" is defined as any telecommunications carrier that (1) requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed; and (2) seeks to provide retail services to the end-user subscriber.⁴ An "executing carrier" is defined as any telecommunications carrier that effects a request that a subscriber's telecommunications carrier be changed.⁵ An executing carrier has actual physical responsibility for making the change to the subscriber's service.⁶ The Commission has stated that submitting carriers should be responsible for verification of carrier change requests and, regardless of the solicitation method used, should employ one of four verification options: written letters of agency (LOAs), electronic authorization, Internet LOA or third party verification.⁷ Executing carriers may not engage in additional verification of the submitting carrier's initial verification of a change request, and may not otherwise cause an unreasonable delay in the execution of the change.⁸

3. In April, 2004, MCI filed a series of individual informal complaints against the LEC Petitioners regarding the rejection of carrier change requests.⁹ MCI alleges that the LEC petitioners were unduly impeding the carrier change process, and were engaging in a form of additional verification of carrier changes submitted by MCI.¹⁰ Specifically, MCI asserts that the LEC Petitioners were rejecting MCI's carrier change submissions when information in the submissions differed from that in the LEC Petitioners' records.¹¹ The LEC Petitioners do not dispute these facts. The LEC Petitioners, however, deny that their practices are in violation of the Communications Act or the Commission's rules.¹²

4. In their *Petition*, LEC Petitioners set forth three main arguments that their practices do not violate the Commission's rules. First, they argue that there is no basis in law, including agency law, for the proposition that a third party (such as an executing LEC) should rely on a claim of authority of a person who the executing carrier believes to be without authorization.¹³ Second, LEC Petitioners contend

³ 47 U.S.C. § 258(a).

⁴ See 47 C.F.R. § 64.1100(a); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508, 1564-65, para. 92 (1998) (*Second Report and Order*).

⁵ See 47 C.F.R. § 64.1100(b); *Second Report and Order*, 14 FCC Rcd at 1565-66, para. 94.

⁶ *Id.* The Commission also stated that, in the current environment, an IXC could also be an "executing carrier," e.g., if a facilities-based IXC resells service to a switchless reseller. See *Second Report and Order*, 14 FCC Rcd at 1566, para. 94.

⁷ See *Second Report and Order*, 14 FCC Rcd at 1567, para. 97; *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, 16000-16006, paras. 6-18 (2000) (*Third Report and Order*).

⁸ See 47 C.F.R. § 64.1120(a)(2).

⁹ See Informal Complaint file nos. EB-04-MDIC 0003 through 0064, filed March 1, 2004.

¹⁰ See *id.*

¹¹ See *id.*

¹² *Petition* at 8.

¹³ *Id.* at 10-14.

that their actions do not constitute reverification in violation of section 64.1120(a)(2).¹⁴ Third, the LEC Petitioners argue that carrier change rejections under these circumstances do not cause “unreasonable delay” in violation of section 64.1120(a)(2).¹⁵ The LEC Petitioners filed the *Petition* to clarify issues related to those complaints.

III. DISCUSSION

5. Section 64.1120(a)(2) of the Commission’s rules provides that “[a]n executing carrier shall not verify the submission of a change in the subscriber’s selection of a telecommunications service received from a submitting carrier.”¹⁶ Based on this rule, we conclude that an executing carrier’s rejection of carrier change submissions by a submitting carrier, based on the executing carrier’s own conclusion that the customer contacted by the submitting carrier was not authorized to make a long distance carrier change, violates section 64.1120(a)(2) of the Commission’s rules.

6. In the *Second Report and Order*, the Commission found that “executing carriers...have both the incentive and ability to delay or deny carrier changes.”¹⁷ The Commission expressed concern in the *Second Report and Order* that executing carriers could use the verification process as a means of delaying or denying carrier change requests in order to benefit themselves or their affiliates.¹⁸ While the Commission agreed that allowing executing carriers to re-verify carrier change requests could help to deter slamming, it ultimately concluded that the anti-competitive effects of re-verification outweighed the potential benefits.¹⁹

7. In the *Second Report and Order*, the Commission was also concerned that re-verification by executing carriers could function as a *de facto* preferred carrier “freeze,” even in situations where a subscriber has not requested such a freeze.²⁰ We believe that the LEC actions at issue here do just this; they serve to restrict consumer control by eliminating the consumer’s ability to designate someone as authorized to change telecommunications service without first contacting the local carrier.²¹

8. The LEC Petitioners argue that there is no basis in law, including agency law, to hold that the executing LEC “has any right to rely on the claim of authority of a person without authorization from the subscriber and thus no obligation to its subscriber to make changes to the subscriber’s account.”²² This argument fails. The executing carrier may not make an independent determination regarding whether the person authorizing the switch was an authorized agent of the party identified on the executing carrier’s account. The Commission has already defined the role of both the submitting and executing carrier in a carrier change request. The submitting carrier, in the course of verifying the intention to change long distance service, is already required to elicit confirmation that the person contacted was authorized to make the change (that is, an agent of the party identified on the account).²³ That the

¹⁴ *Id.* at 14-16.

¹⁵ *Id.* at 16-17.

¹⁶ 47 C.F.R. § 64.1120(a)(2).

¹⁷ *Second Report and Order*, 14 FCC Rcd at 1568, para. 99.

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ *See Second Report and Order*, 14 FCC Rcd at 1568-69, para. 100. A preferred carrier freeze prevents a change in a subscriber’s preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express written or oral consent (*Second Report and Order*, 14 FCC Rcd at 1574, para. 112, n. 348).

²¹ *See id.* at 1569, para. 100.

²² *Petition* at 12.

²³ *See supra* para. 2.

name(s) contained in the executing carrier's local account information differs from that of the contact person listed on the submitting carrier's change is not necessarily indicative of a lack of authority or agency on the part of the person requesting the long distance change. The Commission's rules require that executing carriers engage in "prompt execution of changes verified by a submitting carrier."²⁴ Moreover, executing carriers are only allowed to use submitted carrier change information to effectuate the provision of service by the submitting carrier to its customer.²⁵ An independent determination by an executing carrier of whether the person initiating a switch is an agent of the party listed on the account goes beyond this limited role.

9. LEC Petitioners also state that the Commission, in its *Third Report and Order*, noted without disapproval that carriers maintain lists of customers authorized to make changes.²⁶ In this vein, the LEC Petitioners cite several other situations that can result in their return of a carrier change request to the submitting carrier, such as when a customer is already presubscribed to the submitting carrier, when a customer has a PIC freeze in place, or when PIC changes are not permitted (*e.g.*, certain college dormitory rooms).²⁷ We recognize that carriers may access account information in the course of effectuating carrier changes, and we do not believe that an executing carrier's return of a carrier change to the submitting carrier, under the limited circumstances described above, constitutes reverification in violation of our rules. Our objection to the LEC actions at issue is not related to their consulting account information *per se* during the course of executing a carrier change. Rather, executing carriers may not make an independent determination with respect to the ability of a person to authorize a carrier change.

10. We note that the Commission's preferred carrier change provisions give consumers the option to "freeze" their choice of telecommunications carrier such that they must then contact their LEC to lift the freeze before any carrier changes can be effectuated. The LEC Petitioners argue that it is unreasonable to ask subscribers that wish additional carrier change protections to utilize a preferred carrier freeze.²⁸ LEC Petitioners state that their method of simply rejecting submitting carrier changes that contain name(s) that differ from what is in the LEC's account information "poses less of an impediment to consumers own desire to change carriers."²⁹ We disagree. The Commission's preferred carrier freeze procedures are not "complex" for subscribers.³⁰ Unlike the "de facto" freeze actions of the LEC Petitioners, the Commission's preferred carrier change provisions give consumers extra protections without raising anti-competitive concerns. In addition, because we find that LEC Petitioners' actions violate the prohibition on verification by executing carriers established in section 64.1120(a)(2) of the Commission's rules, we find it unnecessary to reach a conclusion as to whether these actions also result in unreasonable delay by an executing carrier in violation of our rules.

11. Finally, the LEC Petitioners request that we consider this petition in conjunction with a petition filed by MCI (MCI Petition) regarding preemption of a state rule.³¹ The MCI Petition concerns the question of permissible actions by a state regulatory agency. The *Petition*, in contrast, concerns the

²⁴ *Third Report and Order*, 15 FCC Rcd at 16022, para. 51.

²⁵ *See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099, 5109, para. 25 (2003).

²⁶ *See Petition* at 15-16, citing the *Third Report and Order*, 15 FCC Rcd at 16021, para. 50 n.148.

²⁷ *Petition* at 7.

²⁸ *Petition*. at 17-18.

²⁹ *Id.*

³⁰ *See id.* at 17.

³¹ *See Petition for Declaratory Ruling* filed by MCI on Mar. 12, 2004. *See also Motion to Hold Proceeding in Abeyance* filed by the Public Service Commission of West Virginia on June 17, 2004.

actions of private companies. We therefore decline the LEC Petitioner's request to combine our consideration of the *Petition* with the MCI Petition.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Section 258 of the Communications Act, of 1934, as amended, 47 U.S.C. § 258 , and sections 0.141, 0.361,1.3, 64.1120(a)(2) of the Commission Rules, 47 C.F.R. §§ 0.141, 0.361, 1.2, 64.1120(a)(2), the Rural LECs' Petition for Declaratory Ruling IS DENIED.

13. IT IS FURTHER ORDERED that, pursuant to the authority contained in Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258 , and sections 0.141, 0.361,1.3, 64.1120(a)(2) of the Commission Rules, 47 C.F.R. §§ 0.141, 0.361, 1.2, 64.1120(a)(2), this Declaratory Ruling is hereby ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Monica Desai
Acting Chief
Consumer & Governmental Affairs Bureau